

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

---

**JAMAL RASHID,**

**Plaintiff,**

**v.**

**1:16-CV-1094  
(FJS/DJS)**

**DR. SUFYAN, Plastic Surgeon, Williams Center  
Plastic Surgeons Specialists,**

**Defendant.**

---

**APPEARANCES**

**JAMAL RASHID**

**15-A-4424**

Great Meadow Correctional Facility

Box 51

Comstock, New York 12821

Plaintiff *pro se*

**SCULLIN, Senior Judge**

**ORDER**

In a Report-Recommendation and Order dated November 4, 2016, Magistrate Judge Stewart, after conducting a review of the sufficiency of Plaintiff's complaint pursuant to 28 U.S.C. § 1915(e), concluded that the Court did not have subject matter jurisdiction over this matter either under federal question jurisdiction or diversity jurisdiction. Therefore, he recommended that the Court dismiss this action. *See* Dkt. No. 8 at 7.

On November 28, 2016, the Court received for filing a document, which the Court has construed as Plaintiff's objections to Magistrate Judge Stewart's recommendation. *See* Dkt. No. 9. In that document, Plaintiff does not address the jurisdictional issue but, rather, discusses his medical

problems and acknowledges that he was not incarcerated when Defendant Dr. Sufyan violated his right, under the Eighth Amendment, to have adequate medical care. *See id.* at 1.

Whether Plaintiff is attempting to assert his claim against Defendant Dr. Sufyan under the Fourth Amendment or the Eighth Amendment does not change the fact that Plaintiff's complaint does not contain any allegations from which the Court can draw the reasonable inference that, at the time Defendant Dr. Sufyan treated Plaintiff, he did so "on behalf of the State, at the request of the State, or . . . ha[d] any connection to the State such that his actions could be categorized as acting under color of State law." *See* Dkt. No. 8 at 6. Thus, the Court agrees with Magistrate Judge Stewart that Plaintiff has failed to state a cause of action against Defendant Dr. Sufyan pursuant to 42 U.S.C. § 1983; and, therefore, the Court lacks federal question jurisdiction over this matter.

Likewise, there is nothing in Plaintiff's complaint or in his objections to Magistrate Judge Stewart's recommendation that indicates that Plaintiff and Defendant are citizens of different states for purposes of diversity jurisdiction. In fact, as Magistrate Judge Stewart pointed out, it appears that both parties appear to be residents of the State of New York. *See* Dkt. No. 8 at 7. The Court agrees with this assessment and, therefore, concludes that it lacks diversity jurisdiction over this matter.

Accordingly, for the above-stated reasons, the Court hereby

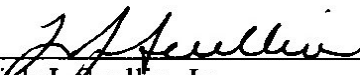
**ORDERS** that Magistrate Judge Stewart's November 4, 2016 Report-Recommendation and Order is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

**ORDERS** that Plaintiff's complaint is **DISMISSED** for lack of subject matter jurisdiction; and the Court further

**ORDERS** that the Clerk of the Court shall serve a copy of this Order on Plaintiff in accordance with the Local Rules.

**IT IS SO ORDERED.**

Dated: December 5, 2016  
Syracuse, New York

  
\_\_\_\_\_  
Frederick J. Scullin, Jr.  
Senior United States District Judge